

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FAIRFIELD SUISUN UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012040652

ORDER OF DETERMINATION OF
SUFFICIENCY OF SECOND
AMENDED DUE PROCESS
COMPLAINT

On April 12, 2012 Parent, on behalf of Student, filed a request for due process hearing¹ (complaint) against Fairfield-Suisun Unified School District (District). As a result of rulings by the Office of Administrative Hearings (OAH) on various motions and notices of insufficiency (NOI's) filed by the District, Student filed a first amended complaint on May 16, 2012, and then a second amended complaint on October 4, 2012. On October 15, 2012, the District filed its third NOI, challenging several allegations in the second amended complaint.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.² The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of title 20 United States Code section 1415(b)(7)(A).

A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time.³ These

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 United States Code section 1415(b)(7)(A).

² 20 U.S.C. § 1415(b) & (c).

³ 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

requirements prevent vague and confusing complaints, and promote fairness by providing the named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.⁴

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁵ The pleading requirements should be liberally construed in light of the broad remedial purposes of the Individuals with Disabilities Education Act (IDEA) and the relative informality of the due process hearings it authorizes.⁶ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁷

DISCUSSION

The District’s NOI challenges four of the five or six issues set forth in Student’s second amended complaint, but ruling on those challenges individually, as has been done in this matter in the past, will delay the hearing of this matter far beyond the time contemplated by the IDEA. Instead, the NOI is sustained as to the entire second amended complaint, and Student will be allowed to file a third amended complaint setting forth all his current allegations in one place so that this matter may proceed expeditiously to hearing.

The nature of the pleadings Student has filed, and the piecemeal adjudication of the sufficiency of individual allegations in them, have resulted in an overall confusion of issues that no further partial ruling is likely to dispel. Student’s original complaint alleged six issues on a standard form but left the second issue blank. On April 27, 2012, the District filed an NOI as to the entire complaint. On April 30, 2012, OAH found Issues 1, 5, and 6 insufficient, and Issues 3 and 4 sufficient.

⁴ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁵ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁶ *Alexandra R. v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board of Educ. v. Benton* (S.D.Ala. 2005) 406 F. Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Bd.* (M.D. Fla., Oct. 28, 2005, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3[nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3[nonpub. opn.].

⁷ Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

On May 16, 2012, Student was deemed to have filed a first amended complaint that provided more details on Issues 1, 5, and 6. On May 29, 2012, the District filed another NOI contending that the first amended complaint was still insufficient as to Issues 1, 5, and 6 and failed to identify Issues 2, 3, and 4. On May 30, 2012, OAH ruled that Issues 1, 5, and 6 were still insufficiently pled. Student was granted leave to amend within 14 days, and ordered to include Issues 3 and 4 in the second amended complaint if Student chose to file one. As explained below, Issue 4 was later dismissed on motion.

On October 4, 2012, Student was deemed to have filed a second amended complaint with the District's consent. The second amended complaint added three issues to Student's sole surviving issue (Issue 3 alleged in the original complaint). Student incorporated by reference Issues 4, 5, and 6 from his original complaint into his second amended complaint, added two issues also numbered 4 and 6, and an additional issue entitled "New Issue: #1." On October 16, 2012, District filed the present NOI as to Issues 4, 5, 6 and the new issue in Student's second amended complaint.

In order to address these claims individually, Student's issues would have to be gathered from earlier pleadings, renumbered, and ruled on in an order that would be quite different from the order and content of the second amended complaint. Some of the issues in the second amended complaint appear to be pled sufficiently and some are not. A ruling disposing of them individually and inviting the filing of a third amended complaint re-alleging some but not all of these issues would likely produce another amended complaint in which some previous allegations are incorporated by reference and perhaps new allegations advanced. Such a document would almost certainly provoke another NOI.

In ruling on an NOI, OAH must determine "on the face of" the complaint whether it is sufficient. (20 U.S.C. § 1415(c)(2)(D).) Because of the unusual history of the pleadings in this matter, the second amended complaint is insufficient on its face because it does not present Student's contentions, as a whole, in one place, in a manner that can clearly be understood. Student will be allowed to amend his complaint to make all of his allegations clear in one document.

One issue must be addressed individually. The District previously moved to dismiss an allegation concerning its alleged failure to comply with a request made by Parent at an individualized education program (IEP) team meeting on October 11, 2011 that an assistive technology consultant contact her to discuss mainstreaming and hearing aids for Student. In an order filed on June 21, 2012, OAH ruled that the issue was barred by a February 15, 2012 Settlement Agreement between the parties. Nonetheless Student repleads that issue, in identical language, in his second amended complaint. In order to facilitate a prompt hearing, Student will be ordered not to replead that issue in any third amended complaint.

Parent is advised that under Education Code section 56505, a parent who is not represented by an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a

complaint Parent is encouraged to contact OAH for assistance if she intends to file another due process hearing request.

ORDER

1. Student's second amended complaint is insufficiently pled, in its entirety, under title 20 United States Code section 1415(c)(2)(D).

2. Student shall be permitted, within 14 days of the date of this Order, to file a third amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II). If Student does not do so, the entire matter shall be dismissed.

3. If Student files a third amended complaint, that complaint shall set forth in full all of Student's arguments in the third amended complaint and not refer to or incorporate any previous allegations from any earlier pleading in any way. Any issue that is not fully set forth in the third amended complaint itself will be deemed insufficiently pled and will be disregarded.

4. If Student files a third amended complaint, Student shall not include the issue that has previously been held barred by the February 15, 2012 Settlement Agreement between the parties: namely, the District's alleged failure to comply with a request made by Parent at an IEP team meeting on October 11, 2011 that an assistive technology consultant contact her to discuss mainstreaming and hearing aids for Student. Any re-allegation of that issue shall be disregarded, and no further challenge to it by the District will be required or adjudicated.

5. The filing of a third amended complaint, if any, will restart the applicable timelines for a due process hearing, and OAH will issue a new scheduling order.

Dated: October 22, 2012

/s/

CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings